

AMENDED IN ASSEMBLY MAY 2, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

## ASSEMBLY BILL

**No. 543**

**Introduced by Assembly Member Vargas**

February 21, 2001

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~~An act to amend Section 7159 of the Business and Professions Code, and to add Section 3155 to the Civil Code, relating to contractors. An act relating to mechanics' liens.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 543, as amended, Vargas. ~~Contractors' works of improvement; financial protection of property owners—Mechanics' liens.~~

*The California Constitution gives workmen the right to a mechanics' lien for the value of labor and materials provided for the improvement of real property.*

*Existing law sets forth the procedures for the enforcement of this right, as specified. Under these procedures, existing law requires that a person record a preliminary 20-day notice, as specified, prior to the recording of a mechanics' lien, prior to filing a stop notice, and prior to asserting a claim against a payment bond, as specified.*

*This bill would declare the intention of the Legislature to revise and reorganize the laws relating to mechanics' liens and stop notices for the purpose of modernization and simplification and addressing problems, such as the potential for double payment by homeowners.*

~~Existing law, the Contractors' State License Law, requires, among other matters, that a home improvement contract, as defined, between~~

~~a contractor and the owner or tenant contain specified provisions and makes the failure to comply with these requirements a misdemeanor offense. Existing law also entitles a contractor and others who perform labor or provide materials to a work of improvement, to a lien, known as a mechanics' lien, upon the improved property for the value of the labor or materials supplied. Under existing law, the property owner may petition to release the property from a mechanics' lien if no action is brought within a specified time period to enforce the lien.~~

~~This bill would require a home improvement contract to contain provisions requiring the contractor to furnish a payment and performance bond if in a prior civil, criminal, or administrative action, as specified, the contractor was responsible for committing fraud or failing to comply with accepted trade standards for good and workmanlike construction. The bill would authorize a property owner to petition to release property from a mechanics' lien by a subcontractor, if the owner had made a payment to the prime contractor and either the payment constituted the total amount allowed to the prime contractor for the work performed by the subcontractor or the subcontractor knew the prime contractor was responsible in a prior action for committing either fraud or substandard workmanship, as previously described.~~

~~Because the bill would specify an additional requirement applicable to home improvement contracts, the violation of which would be punishable as a misdemeanor, it would expand the scope of an existing crime, thereby imposing a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes no. State-mandated local program: yes no.~~

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1.—Section 7159 of the Business and Professions~~
- 2     ~~SECTION 1. It is the intent of the Legislature to revise and~~
- 3     ~~reorganize the mechanics' lien and stop notice provisions in Title~~
- 4     ~~15 (commencing with Section 3082) of Part 4 of Division 3 of the~~

*Civil Code, and related provisions, with the purpose of modernizing and simplifying the statutes and addressing problems, such as the potential for double payment by homeowners.*

Code is amended to read:

~~7159. This section applies only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant for work upon a residential building or structure, or upon land adjacent thereto, for proposed repairing, remodeling, altering, converting, modernizing, or adding to the residential building or structure or land adjacent thereto, and where the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars (\$500).~~

~~Every home improvement contract and every contract, the primary purpose of which is the construction of a swimming pool, is subject to this section. Every contract and any changes in the contract subject to this section shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain all of the following:~~

~~(a) The name, address, and license number of the contractor, and the name and registration number of any salesperson who solicited or negotiated the contract.~~

~~(b) The approximate dates when the work will begin and on which all construction is to be completed.~~

~~(c) A plan and scale drawing showing the shape, size, dimensions, and construction and equipment specifications for a swimming pool and for other home improvements, a description of the work to be done and description of the materials to be used and the equipment to be used or installed, and the agreed consideration for the work.~~

~~(d) If the payment schedule contained in the contract provides for a downpayment to be paid to the contractor by the owner or the tenant before the commencement of work, the downpayment may not exceed two hundred dollars (\$200) or 2 percent of the contract price for swimming pools, or one thousand dollars (\$1,000) or 10~~

1 percent of the contract price for other home improvements,  
2 excluding finance charges, whichever is less.

3 (e) ~~A schedule of payments showing the amount of each~~  
4 ~~payment as a sum in dollars and cents. In no event may the payment~~  
5 ~~schedule provide for the contractor to receive, nor may the~~  
6 ~~contractor actually receive, payments in excess of 100 percent of~~  
7 ~~the value of the work performed on the project at any time,~~  
8 ~~excluding finance charges, except that the contractor may receive~~  
9 ~~an initial downpayment authorized by subdivision (d). With~~  
10 ~~respect to a swimming pool contract, the final payment may be~~  
11 ~~made at the completion of the final plastering phase of~~  
12 ~~construction, provided that any installation or construction of~~  
13 ~~equipment, decking, or fencing required by the contract is also~~  
14 ~~completed. A failure by the contractor without lawful excuse to~~  
15 ~~substantially commence work within 20 days of the approximate~~  
16 ~~date specified in the contract when work will begin shall postpone~~  
17 ~~the next succeeding payment to the contractor for that period of~~  
18 ~~time equivalent to the time between when substantial~~  
19 ~~commencement was to have occurred and when it did occur. The~~  
20 ~~schedule of payments shall be stated in dollars and cents, and shall~~  
21 ~~be specifically referenced to the amount of work or services to be~~  
22 ~~performed and to any materials and equipment to be supplied.~~  
23 ~~With respect to a contract that provides for a schedule of monthly~~  
24 ~~payments to be made by the owner or tenant and for a schedule of~~  
25 ~~payments to be disbursed to the contractor by a person or entity to~~  
26 ~~whom the contractor intends to assign the right to receive the~~  
27 ~~owner's or tenant's monthly payments, the payments referred to in~~  
28 ~~this subdivision mean the payments to be disbursed by the assignee~~  
29 ~~and not those payments to be made by the owner or tenant.~~

30 (f) ~~A statement that, upon satisfactory payment being made for~~  
31 ~~any portion of the work performed, the contractor shall, prior to~~  
32 ~~any further payment being made, furnish to the person contracting~~  
33 ~~for the home improvement or swimming pool a full and~~  
34 ~~unconditional release from any claim or mechanic's lien pursuant~~  
35 ~~to Section 3114 of the Civil Code for that portion of the work for~~  
36 ~~which payment has been made.~~

37 (g) ~~(1) The requirements set forth in subdivisions (d), (e), and~~  
38 ~~(f) do not apply when the contract provides for the contractor to~~  
39 ~~furnish a performance and payment bond, lien and completion~~  
40 ~~bond, bond equivalent, or joint control approved by the registrar~~

1 covering full performance and completion of the contract and the  
2 bonds or joint control is or are furnished by the contractor, or when  
3 the parties agree for full payment to be made upon or for a schedule  
4 of payments to commence after satisfactory completion of the  
5 project. The contract shall contain, in close proximity to the  
6 signatures of the owner and contractor, a notice in at least 10-point  
7 type stating that the owner or tenant has the right to require the  
8 contractor to have a performance and payment bond.

9 (2) If the contractor was convicted of, or pleaded nolo  
10 contendere in a criminal action for fraud or failure to comply with  
11 accepted trade standards for good workmanlike construction or  
12 was held liable by settlement or final judgment in a civil or  
13 administrative action for committing either of those acts, the home  
14 improvement contract shall require the contractor to furnish a  
15 performance and payment bond that requires either completion of  
16 the work specified in the contract or payment of damages up to the  
17 total amount of the contract price. Notwithstanding paragraph (1),  
18 the requirements set forth in subdivisions (d), (e), and (f) shall  
19 apply to a contract subject to this paragraph.

20 (h) No extra or change order work may be required to be  
21 performed without prior written authorization of the person  
22 contracting for the construction of the home improvement or  
23 swimming pool. No change order is enforceable against the  
24 person contracting for home improvement work or swimming  
25 pool construction unless it clearly sets forth the scope of work  
26 encompassed by the change order and the price to be charged for  
27 the changes. Any change order forms for changes or extra work  
28 shall be incorporated in, and become a part of, the contract. Failure  
29 to comply with the requirements of this subdivision does not  
30 preclude the recovery of compensation for work performed based  
31 upon quasi-contract, quantum meruit, restitution, or other similar  
32 legal or equitable remedies designed to prevent unjust enrichment.

33 (i) If the contract provides for a payment of a salesperson's  
34 commission out of the contract price, that payment shall be made  
35 on a pro rata basis in proportion to the schedule of payments made  
36 to the contractor by the disbursing party in accordance with  
37 subdivision (e).

38 (j) The language of the notice required pursuant to Section  
39 7018.5.

~~(k) What constitutes substantial commencement of work pursuant to the contract.~~

~~(l) A notice that failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of the Contractors' State License Law.~~

~~(m) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.~~

~~A failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of this section.~~

~~This section does not prohibit the parties to a home improvement contract from agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.~~

~~The writing may also contain other matters agreed to by the parties to the contract.~~

~~The writing shall be legible and shall be in a form that clearly describes any other document that is to be incorporated into the contract. Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor.~~

~~For purposes of this section, the board shall, by regulation, determine what constitutes "without lawful excuse."~~

~~The provisions of this section are not exclusive and do not relieve the contractor or any contract subject to it from compliance with all other applicable provisions of law.~~

~~A violation of this section by a licensee, or a person subject to be licensed, under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.~~

~~(n) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's~~

1 ability to pay, as defined in subdivision (e) of Section 1203.1b of  
2 the Penal Code. In addition to full restitution, and imprisonment  
3 authorized by this section, the court may impose a fine of not less  
4 than five hundred dollars (\$500) nor more than twenty-five  
5 thousand dollars (\$25,000), based upon the defendant's ability to  
6 pay. This subdivision applies to natural disasters for which a state  
7 of emergency is proclaimed by the Governor pursuant to Section  
8 8625 of the Government Code or for which an emergency or major  
9 disaster is declared by the President of the United States.

10 (o) (1) ~~An indictment or information against a person who is~~  
11 ~~not licensed, but who is required to be licensed under this chapter,~~  
12 ~~shall be brought, or a criminal complaint filed, for a violation of~~  
13 ~~this section within four years from the date the buyer signs the~~  
14 ~~contract.~~

15 (2) ~~An indictment or information against a person who is~~  
16 ~~licensed under this chapter shall be brought, or a criminal~~  
17 ~~complaint filed, for a violation of this section within one year from~~  
18 ~~the date the buyer signs the contract.~~

19 (3) ~~The limitations on actions in this subdivision shall not apply~~  
20 ~~to any administrative action filed against a licensed contractor.~~

21 SEC. 2. ~~Section 3155 is added to the Civil Code, to read:~~

22 3155. ~~(a) Notwithstanding any other provision of law, the~~  
23 ~~owner of the property or the owner of any interest in the property~~  
24 ~~may petition the court for a decree to release the property from a~~  
25 ~~lien by a subcontractor who has made a site improvement upon the~~  
26 ~~property at the request of the prime contractor, if the owner has~~  
27 ~~made any payment to the prime contractor and either of the~~  
28 ~~following circumstances exist:~~

29 (1) ~~The payment constitutes the total amount allowed to the~~  
30 ~~prime contractor for the work performed by the subcontractor.~~

31 (2) ~~The subcontractor has actual or constructive knowledge~~  
32 ~~that the prime contractor was convicted of, or pleaded nolo~~  
33 ~~contendere in a criminal action for fraud or failure to comply with~~  
34 ~~accepted trade standards for good workmanlike construction or~~  
35 ~~was held liable by settlement or final judgment in a civil or~~  
36 ~~administrative action for committing either of those acts:~~

37 (b) ~~The petition shall be verified and shall allege the following:~~

38 (1) ~~The date of recordation of the claim of lien.~~

39 (2) ~~The legal description of the property affected by the claim~~  
40 ~~of lien.~~



~~(3) The amount of the payment made to the prime contractor and the date it was made.~~

~~(4) The existence of the circumstance described in paragraph (1) or (2) of subdivision (a).~~

~~A certified copy of the claim of lien shall be attached to the petition.~~

~~(c) Upon the filing of the petition, the clerk, or if there is no clerk, the judge shall set a date for the hearing not more than 30 days following the filing of the petition. The court may continue the hearing beyond the 30-day period, but good cause shall be shown for any continuance.~~

~~(d) A copy of the petition and the notice setting the date for the hearing, shall be served upon the subcontractor at least 10 days prior to the date set for the hearing in the manner in which a summons is required to be served, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the subcontractor at the address as shown: (1) on the preliminary 20-day notice served by the subcontractor pursuant to Section 3097, (2) in the records of the registrar of contractors, (3) on the contract on which the lien is based, or (4) on the claim of lien itself. If service is made by mail as provided in this subdivision, service is complete on the fifth day following the day of the deposit of the mail. No decree shall issue in favor of the petitioner unless the petitioner proves that service of the petition and the order fixing the date for hearing was made in compliance with this subdivision.~~

~~(e) In the event judgment is rendered in favor of the petitioner, the decree shall indicate all of the following:~~

~~(1) The date the lien was recorded.~~

~~(2) The county and city, if any, in which the lien was recorded.~~

~~(3) The book and page of the place in the official records where the lien is recorded.~~

~~(4) The legal description of the property affected. Upon the recordation of a certified copy of the decree, the property described in the decree shall be released from the lien.~~

~~(f) The prevailing party shall be entitled to attorneys' fees not to exceed one thousand dollars (\$1,000).~~

~~(g) Nothing in this section shall be construed to bar any other cause of action or claim for relief by the owner of the property or an interest in the property, nor shall a decree canceling a subcontractor's lien bar the subcontractor from bringing any other~~



1 ~~cause of action or claim for relief, other than an action foreclosing~~  
2 ~~the lien. However, no other action or claim shall be joined with the~~  
3 ~~claim for relief established by this section.~~

4 ~~(h) The provisions of Chapter 2.5 (commencing with Section~~  
5 ~~1141.10) of Title 3 of Part 3 of the Code of Civil Procedure shall~~  
6 ~~not apply to causes commenced pursuant to this section.~~

7 ~~SEC. 3.—No reimbursement is required by this act pursuant to~~  
8 ~~Section 6 of Article XIII B of the California Constitution because~~  
9 ~~the only costs that may be incurred by a local agency or school~~  
10 ~~district will be incurred because this act creates a new crime or~~  
11 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
12 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
13 ~~the Government Code, or changes the definition of a crime within~~  
14 ~~the meaning of Section 6 of Article XIII B of the California~~  
15 ~~Constitution.—~~

